



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0416]

RIN 1625-AA00

Safety Zone; Bath Creek, Bath, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of Bath Creek near Bath, North Carolina, in support of a fireworks display on May 26, 2018. This temporary safety zone is intended to restrict vessel traffic from a portion of Bath Creek during the Bath Festival fireworks display to protect the life and property of the maritime public and spectators from the hazards posed by aerial fireworks displays. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) North Carolina or a designated representative.

DATES: This rule is effective from 8:30 p.m. through 9:00 p.m. on May 26, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0416 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Petty Officer Joshua O'Rourke, Waterways Management Division,

U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone 910–772–2227,
email Joshua.P.Orourke@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

| | |
|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| U.S.C. | United States Code |
| COTP | Captain of the Port |

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. The publishing of an NPRM would be impracticable and contrary to the public interest since immediate action is needed to minimize potential danger to the participants and the public during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to protect persons and vessels from the hazards associated

with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP North Carolina has determined that potential hazards associated with the Bath Festival fireworks display on May 26, 2018, is a safety concern for maritime spectators during the launch of fireworks on Bath Creek in Bath, North Carolina. This rule is necessary to protect persons and vessels from the potential hazards associated with the aerial fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 8:30 p.m. until 9 p.m. on May 26, 2018. The safety zone will include all navigable waters within 150 yard radius of the fireworks barge at approximate position: latitude 35°28'04"N, longitude 076°48'55"W, on Bath Creek, Bath, North Carolina. This safety zone is being established for the safety of the maritime spectators observing the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. All vessels within this safety zone when this section becomes effective must depart the zone immediately. To request permission to remain in, enter, or transit through the safety zone, vessels should contact the COTP North Carolina or the COTP North Carolina's representative through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina, at telephone number 910-343-3882, or on VHF-FM marine band radio channel 13 (165.65 MHz) or channel 16 (156.8 MHz).

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. The half hour regulation enforcement period should not overly burden vessel traffic based on the short duration of the period. Smaller vessels will be able to safely transit around this safety zone, which will impact a designated area of Bath Creek, Bath, NC. Additionally, the rule allows vessels to seek permission to enter the zone. The Coast Guard will issue a Broadcast Notice to Mariners to notify vessels in the region of the establishment of this regulation.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While the precise number of small entities impacted is unknown, Bath Creek has a low number of vessels transiting the area planned for the safety zone, during the enforcement period. Although, some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting half an hour that will prohibit entry into a portion of Bath Creek, Bath, NC. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0416 to read as follows:

§ 165.T05-0416 Safety Zone, Bath Creek, Bath, NC.

(a) Location. The following area is a safety zone: all navigable waters within a 150 yard radius of the fireworks barge at approximate position: latitude 35°28'04"N, longitude 076°48'55"W, on Bath Creek, Bath, North Carolina.

(b) Definitions. As used in this section --

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

Captain of the Port means the Commander, Sector North Carolina.

(c) Regulations. (1) The general regulations governing safety zones in subpart C of this part apply to the area described in paragraph (a) of this section.

(2) With the exception of the fireworks barge and crew, entry into or remaining in this safety zone is prohibited unless authorized by the COTP North Carolina or the COTP North Carolina's designated representative. All other vessels must depart the zone immediately.

(3) All vessels within this safety zone when this section becomes effective must depart the zone immediately.

(4) To request permission to remain in, enter, or transit through the safety zone, contact the COTP North Carolina or the COTP North Carolina's representative through

the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina, at telephone number 910-343-3882, or on VHF-FM marine band radio channel 13 (165.65 MHz) or channel 16 (156.8 MHz).

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

Dated: May 16, 2018.

Bion B. Stewart,
Captain, U. S. Coast Guard,
Captain of the Port North Carolina.

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